

1                                   A bill to be entitled  
 2       An act relating to controlled substances; creating s.  
 3       408.0512; requiring the Agency for Health Care  
 4       Administration to enter into a contract with a multi-state  
 5       electronic prescribing network to provide access to  
 6       certain information on certain controlled substances;  
 7       providing for access to controlled substance information  
 8       in the network by a criminal justice agency and the  
 9       Department of Health or relevant regulatory board;  
 10      requiring the agency to seek grants and donations to  
 11      implement the act; amending s. 458.309, F.S.; limiting  
 12      ownership of pain management clinics; amending s. 458.331,  
 13      F.S.; making the practice of medicine in an unregistered  
 14      pain management clinic grounds for licensure disciplinary  
 15      action; making advertising the use, sale, or dispensing of  
 16      controlled substances grounds for physician licensure  
 17      disciplinary action; amending s. 459.005, F.S.; limiting  
 18      ownership of pain management clinics; amending s. 459.015,  
 19      F.S.; making the practice of osteopathic medicine in an  
 20      unregistered pain management clinic grounds for  
 21      osteopathic physician licensure disciplinary action;  
 22      making advertising the use, sale, or dispensing of  
 23      controlled substances grounds for licensure disciplinary  
 24      action; amending s. 465.018, F.S.; requiring community  
 25      pharmacy permit applicants to demonstrate ability to  
 26      participate in and transmit dispensing information through  
 27      a multi-state electronic prescribing network; requiring  
 28      community pharmacies to transmit dispensing information on

29 certain controlled substance prescriptions through a  
 30 multi-state electronic prescribing network; providing  
 31 effective dates; amending 465.023, F.S.; making failure to  
 32 transmit certain dispensing information through a multi-  
 33 state electronic prescribing network grounds for community  
 34 pharmacy permit disciplinary action; amending s. 465.0276,  
 35 F.S.; prohibiting registered dispensing practitioners from  
 36 dispensing more than a specified amount of certain  
 37 controlled substances; providing penalties; providing  
 38 exceptions; providing an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

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42 Section 1. Section 408.0513, Florida Statutes, is  
 43 created to read:

44 408.0513 Access to prescription drug medication history.-

45 (1) The agency shall, by December 1, 2010, contract with  
 46 an entity that operates a multi-state electronic prescribing  
 47 network to provide access to Schedule II and III controlled  
 48 substance information available on the network to:

49 (a) A criminal justice agency, as defined in s. 119.011,  
 50 which enforces the laws of this state or the United States and  
 51 which has initiated an active investigation involving a specific  
 52 violation of law.

53 (b) The Department of Health or the relevant health  
 54 regulatory board responsible for the licensure, regulation, or  
 55 discipline of practitioners, pharmacists, or other persons who  
 56 are authorized to prescribe, administer, or dispense controlled

57 substances and who are involved in a specific investigation  
 58 involving a designated person.

59 (2) The agency shall adopt rules under ss. 120.536(1) and  
 60 120.54 to administer the provisions of this section, including  
 61 the method and terms of access to the information provided under  
 62 subsection (1).

63 (3) The agency shall seek federal grants and donations  
 64 from private entities to implement this section.

65 Section 2. Subsection (4) of section 458.309, Florida  
 66 Statutes, is amended to read:

67 458.309 Rulemaking authority.—

68 (4) All privately owned pain-management clinics,  
 69 facilities, or offices, hereinafter referred to as "clinics,"  
 70 primarily engaged in the treatment of pain by prescribing or  
 71 dispensing controlled substances, and which advertise in any  
 72 medium for any type of pain-management services, or employ a  
 73 physician who is primarily engaged in the treatment of pain by  
 74 prescribing or dispensing controlled substance medications, must  
 75 register with the department by January 4, 2010, unless that  
 76 clinic is licensed as a facility pursuant to chapter 395. The  
 77 department shall deny registration to any clinic not fully owned  
 78 by a physician or group of physicians. The department shall deny  
 79 registration to any clinic owned by or with any contractual or  
 80 employment relationship with a physician whose Drug Enforcement  
 81 Administration number has ever been suspended or revoked, or  
 82 against whom the board has taken final administrative action  
 83 related to the physician's impairment due to the misuse or abuse  
 84 of alcohol or drugs. The department shall deny registration to

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85 any clinic in which ownership or any controlling interest is  
86 held by any person who was convicted of, or entered a plea of  
87 guilty or nolo contendere to, regardless of adjudication, a  
88 felony under chapter 893. A physician may not practice medicine  
89 in a pain-management clinic that is required to but has not  
90 registered with the department. Each clinic location shall be  
91 registered separately regardless of whether the clinic is  
92 operated under the same business name or management as another  
93 clinic. If the clinic is licensed as a health care clinic under  
94 chapter 400, the medical director is responsible for registering  
95 the facility with the department. If the clinic is not  
96 registered pursuant to chapter 395 or chapter 400, the clinic  
97 shall, upon registration with the department, designate a  
98 physician who is responsible for complying with all requirements  
99 related to registration of the clinic. The designated physician  
100 shall be licensed under this chapter or chapter 459 and shall  
101 practice at the office location for which the physician has  
102 assumed responsibility. The department shall inspect the clinic  
103 annually to ensure that it complies with rules of the Board of  
104 Medicine adopted pursuant to this subsection and subsection (5)  
105 unless the office is accredited by a nationally recognized  
106 accrediting agency approved by the Board of Medicine. The actual  
107 costs for registration and inspection or accreditation shall be  
108 paid by the physician seeking to register the clinic.

109 Section 2. Paragraph (nn) of subsection (1) of section  
110 458.331, Florida Statutes, is amended to read:

111 458.331 Grounds for disciplinary action; action by the  
112 board and department.—

113 (1) The following acts constitute grounds for denial of a  
 114 license or disciplinary action, as specified in s. 456.072(2):

115 (nn) Practicing medicine in a clinic that is required to  
 116 but has not registered with the department pursuant to s.  
 117 458.309.

118 (oo) Using any communication media to promote or advertise  
 119 the use, sale, or dispensing of any controlled substance  
 120 appearing in any schedule in chapter 893.

121 (pp) Violating any provision of this chapter or chapter  
 122 456, or any rules adopted pursuant thereto.

123 Section 3. Subsection (3) of section 459.005, Florida  
 124 Statutes, is amended to read:

125 459.005 Rulemaking authority.—

126 (3) All privately owned pain-management clinics,  
 127 facilities, or offices, hereinafter referred to as "clinics,"  
 128 primarily engaged in the treatment of pain by prescribing or  
 129 dispensing controlled substances, and which advertise in any  
 130 medium for any type of pain-management services, or employ a  
 131 physician who is licensed under this chapter and who is  
 132 primarily engaged in the treatment of pain by prescribing or  
 133 dispensing controlled substance medications, must register with  
 134 the department by January 4, 2010, unless that clinic is  
 135 licensed as a facility under chapter 395. The department shall  
 136 deny registration to any clinic not fully owned by a physician  
 137 or group of physicians. The department shall deny registration  
 138 to any clinic owned by or with any contractual or employment  
 139 relationship with a physician whose Drug Enforcement  
 140 Administration number has ever been suspended or revoked, or

141 against whom the board has taken final administrative action  
 142 related to the physician's impairment due to the misuse or abuse  
 143 of alcohol or drugs. The department shall deny registration to  
 144 any clinic in which ownership or any controlling interest is  
 145 held by any person who was convicted of, or entered a plea of  
 146 guilty or nolo contendere to, regardless of adjudication, a  
 147 felony under chapter 893. A physician may not practice  
 148 osteopathic medicine in a pain-management clinic that is  
 149 required to but has not registered with the department. Each  
 150 clinic location shall be registered separately regardless of  
 151 whether the clinic is operated under the same business name or  
 152 management as another clinic. If the clinic is licensed as a  
 153 health care clinic under chapter 400, the medical director is  
 154 responsible for registering the facility with the department. If  
 155 the clinic is not registered under chapter 395 or chapter 400,  
 156 the clinic shall, upon registration with the department,  
 157 designate a physician who is responsible for complying with all  
 158 requirements related to registration of the clinic. The  
 159 designated physician shall be licensed under chapter 458 or this  
 160 chapter and shall practice at the office location for which the  
 161 physician has assumed responsibility. The department shall  
 162 inspect the clinic annually to ensure that it complies with  
 163 rules of the Board of Osteopathic Medicine adopted pursuant to  
 164 this subsection and subsection (4) unless the office is  
 165 accredited by a nationally recognized accrediting agency  
 166 approved by the Board of Osteopathic Medicine. The actual costs  
 167 for registration and inspection or accreditation shall be paid  
 168 by the physician seeking to register the clinic.

169 Section 4. Paragraph (pp) of subsection (1) of section  
 170 459.015, Florida Statutes, is amended to read:

171 459.015 Grounds for disciplinary action; action by the  
 172 board and department.—

173 (1) The following acts constitute grounds for denial of a  
 174 license or disciplinary action, as specified in s. 456.072(2):

175 (pp) Practicing osteopathic medicine in a clinic that is  
 176 required to but has not registered with the department pursuant  
 177 to s. 458.309.

178 (qq) Using any communication media to promote or advertise  
 179 the use, sale, or dispensing of any controlled substance  
 180 appearing in any schedule in chapter 893.

181 (rr) Violating any provision of this chapter or chapter  
 182 456, or any rules adopted pursuant thereto.

183 Section 5. Section 465.018, Florida Statutes, is amended  
 184 to read:

185 465.018 Community pharmacies; permits.—Any person desiring  
 186 a permit to operate a community pharmacy shall apply to the  
 187 department. If the board office certifies that the application  
 188 complies with the laws of the state and the rules of the board  
 189 governing pharmacies, the department shall issue the permit. No  
 190 permit shall be issued unless a licensed pharmacist is  
 191 designated as the prescription department manager responsible  
 192 for maintaining all drug records, providing for the security of  
 193 the prescription department, and following such other rules as  
 194 relate to the practice of the profession of pharmacy. The  
 195 permittee and the newly designated prescription department  
 196 manager shall notify the department within 10 days of any change

197 in prescription department manager. Effective July 1, 2012, no  
 198 permit shall be issued unless the applicant demonstrates ability  
 199 to participate in and transmit dispensing information through a  
 200 multi-state electronic prescribing network. Effective January  
 201 1, 2013, all permittees shall transmit dispensing information  
 202 for all Schedule II and III controlled substance prescriptions  
 203 through a multi-state electronic prescribing network.

204 Section 6. Subsection (1) of section 465.023, Florida  
 205 Statutes, is amended to read:

206 465.023 Pharmacy permittee; disciplinary action.—

207 (1) The department or the board may revoke or suspend the  
 208 permit of any pharmacy permittee, and may fine, place on  
 209 probation, or otherwise discipline any pharmacy permittee if the  
 210 permittee, or any affiliated person, partner, officer, director,  
 211 or agent of the permittee, including a person fingerprinted  
 212 under s. 465.022(3), has:

213 (a) Obtained a permit by misrepresentation or fraud or  
 214 through an error of the department or the board;

215 (b) Attempted to procure, or has procured, a permit for  
 216 any other person by making, or causing to be made, any false  
 217 representation;

218 (c) Violated any of the requirements of this chapter or  
 219 any of the rules of the Board of Pharmacy; of chapter 499, known  
 220 as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-  
 221 392, known as the "Federal Food, Drug, and Cosmetic Act"; of 21  
 222 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse  
 223 Prevention and Control Act; or of chapter 893;

224 (d) Been convicted or found guilty, regardless of

225 adjudication, of a felony or any other crime involving moral  
 226 turpitude in any of the courts of this state, of any other  
 227 state, or of the United States;

228 (e) Been convicted or disciplined by a regulatory agency  
 229 of the Federal Government or a regulatory agency of another  
 230 state for any offense that would constitute a violation of this  
 231 chapter;

232 (f) Been convicted of, or entered a plea of guilty or nolo  
 233 contendere to, regardless of adjudication, a crime in any  
 234 jurisdiction which relates to the practice of, or the ability to  
 235 practice, the profession of pharmacy;

236 (g) Been convicted of, or entered a plea of guilty or nolo  
 237 contendere to, regardless of adjudication, a crime in any  
 238 jurisdiction which relates to health care fraud; ~~or~~

239 (h) Dispensed any medicinal drug based upon a  
 240 communication that purports to be a prescription as defined by  
 241 s. 465.003(14) or s. 893.02 when the pharmacist knows or has  
 242 reason to believe that the purported prescription is not based  
 243 upon a valid practitioner-patient relationship that includes a  
 244 documented patient evaluation, including history and a physical  
 245 examination adequate to establish the diagnosis for which any  
 246 drug is prescribed and any other requirement established by  
 247 board rule under chapter 458, chapter 459, chapter 461, chapter  
 248 463, chapter 464, or chapter 466; ~~or~~ or

249 (i) Failed to transmit dispensing information for all  
 250 Schedule II and III controlled substance prescriptions through a  
 251 multi-state electronic prescribing network pursuant to s.  
 252 465.018.

253 Section 7. Subsection (1) of section 465.0276, Florida  
 254 Statutes, is amended to read:

255 465.0276 Dispensing practitioner.—

256 (1) (a) A person may not dispense medicinal drugs unless  
 257 licensed as a pharmacist or otherwise authorized under this  
 258 chapter to do so, except that a practitioner authorized by law  
 259 to prescribe drugs may dispense such drugs to her or his  
 260 patients in the regular course of her or his practice in  
 261 compliance with this section.

262 (b) A practitioner registered under this section may not  
 263 dispense more than a 72-hour supply of a controlled substance  
 264 listed in Schedule II or Schedule III as provided in s. 893.03.  
 265 It is unlawful for a practitioner registered under this section  
 266 to dispense more than a 72-hour supply of a controlled substance  
 267 listed in Schedule II or Schedule III as provided in s. 893.03.  
 268 A practitioner who violates this provision commits a felony of  
 269 the third degree, punishable as provided in s. 775.082 or s  
 270 775.083. This paragraph does not apply to the dispensing of  
 271 complimentary packages of medicinal drugs to the practitioner's  
 272 own patients in the regular course of her or his practice,  
 273 without the payment of fee or remuneration of any kind, whether  
 274 direct or indirect, and in conformity with the requirements of  
 275 subsection (5). This paragraph does not apply to controlled  
 276 substances dispensed in the health care system of the Department  
 277 of Corrections.

278 Section 8. This act shall take effect July 1, 2010.